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SOUTHERN RAILWAY COMPANY *v.* TYREE'S ADMINISTRATOR.

Nov. 21, 1912.

[7 Va. App. 146.]

1. Railroads—Signals in Yards.—The reasons which justify a railroad company in dispensing with ordinary signals and lookouts in the work of shifting engines on railroad yards, and in placing upon the employee there a higher degree of care for his own safety from such engines, are without force when applied to the case of a regular train on a regular run over the main line. In the latter case there are no duties upon the engineer and fireman, except the usual duty of looking ahead and attending to the proper operation of the train, which has the same independence of position and action within yard limits that it has outside. The yard being a place of ceaseless activity, the engineer and fireman on such a train should be more on the alert to avoid injury because of the increased danger of harm occasioned by the environments.

2. Evidence—Demurrer—Negligence.—If the jury might find the defendant guilty of negligence and the deceased free from contributory negligence, the court must so find on a demurrer to the evidence.

3. Damages—Elements—Wrongful Act.—The elements of damage and the rules for their ascertainment by a jury in the case of wrongful act have been long and thoroughly established, and this court has no disposition to depart therefrom and adopt new elements of damage.

Error to Circuit Court of Amherst county. Affirmed.

Coleman, Easley & Coleman, for the plaintiff in error.

Aubrey E. Strode, Volney E. Howard, for the defendant in error.

Note.

See *Southern Railway Co. v. Darnell's Administratrix*, 18 Va. Law Reg. 690, and note.

RAMSEY et als. *v.* DODD.

Richmond, November 21, 1912.

[7 Va. App. 149.]

1. Equity—Jurisdiction—Wills—Probate by Clerk—Code, secs. 2544, 2639-a.—A bill will not lie to an order of probate by the clerk of a court. The remedy in the first instance is by appeal to the court whose clerk made the order admitting the will to probate, as provided by section 2639-a of the Code.